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6 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
7

8 UNITED STATES OF AMERICA, )

9 Plaintiff, )

10 vs. )

11 LEONEL MICHEL VARGAS, )

12 Defendant. )

CR-13-6025-EFS

United States' Notice of Intent  
to Comply with Criminal  
Discovery Obligations and  
Reciprocal Request for  
Disclosure of Evidence by the  
Defendant

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15  
16 Plaintiff, United States of America, by and through, Michael C. Ormsby,  
17 United States Attorney for the Eastern District of Washington, and Stephanie Van  
18 Marter, Assistant United States Attorney for the Eastern District of Washington,  
19 submit the following Notice of Intent to Comply with Criminal Discovery  
20 Obligations and Reciprocal Request for Disclosure of Evidence by the Defendant.

21 **I. INTRODUCTION**

22 On May 22, 2013, the Defendant was indicted and charged with Illegal  
23 Alien in Possession of a Firearm, Count 1, in violation of 18 U.S.C. § 922(g)(5)  
24 and Possession with Intent to Distribute 5 grams or more of Actual  
25 Methamphetamine, Count 2, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)(viii).

26 On May 22, 2013, the Defendant was arraigned. On that same date, the Court  
27 issued an Order Regarding Discovery and Pretrial Motions. The United States  
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and Reciprocal Request for Disclosure of Evidence by the Defendant - 1



1 will provide initial discovery and will continue to do so, as discovery is received.  
2 The United States will also advise defense counsel, pursuant to Fed. Crim. P. Rule  
3 16(a)(1)(E), that physical evidence in the case is available for inspection by  
4 contacting the AUSA/or Case Agent. In addition, the United States intends to  
5 work with defense counsel on any discovery-related issues that might arise during  
6 the course of litigation.

## 7 **II. INTENT TO COMPLY WITH CRIMINAL DISCOVERY** 8 **OBLIGATIONS**

9 The United States is mindful of its criminal discovery obligations under  
10 Federal Rule of Criminal Procedure 16, local court rules, the *Jencks* Act  
11 (18 U.S.C. § 3500) and the independent obligations applied by *Brady v. Maryland*,  
12 373 U.S. 83 (1963), and its progeny, and intends to fully comply with those  
13 obligations. The United States is also mindful of its obligation to protect victims  
14 and witnesses from retaliation or intimidation and to safeguard ongoing criminal  
15 investigations.

16 In accordance with the time frame set forth in the Courts Discovery Order  
17 (which requires a complete furnishing of all investigative material within 14 days  
18 of the Courts Order) and in accord with the court rules, statutes and case law  
19 governing discovery disclosures in federal criminal cases, the United States hereby  
20 gives notice that it will not consent to releasing discovery, documents, materials,  
21 or “all investigative material” in this case pursuant to the Courts “Open File”  
22 Discovery Order. Rather, the United States will diligently produce discovery in its  
23 possession in accordance with the discovery obligations set forth in Fed. R. Crim.  
24 P. 16, 18 U.S.C. § 3500 (*Jencks* Act), the rules of production established therein,  
25 the landmark decisions of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Kyles v.*  
26 *Whitley*, 514 U.S. 419, 433 (1995), in disclosing exculpatory material within its  
27 possession which is material to the issue of guilt or punishment and *Giglio v.*  
28 *United States*, 405 U.S. 150, 154 (1972), as well as Court Rules, statutes, federal  
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1 case law, and of course any further Order of this Court. The United States will not  
2 be providing discovery on an “open-file” basis, pursuant to the Department of  
3 Justice’s policy on this issue.

4 Furthermore, while the Discovery Order states that the government shall  
5 provide, within 3 business days of the date of arraignment, all investigative  
6 material in its file and shall complete discovery within 14 days of the date the  
7 order was issued, the United States will not conclude the discovery process within  
8 14 days of the date the order was issued. As is customary in all criminal cases, the  
9 United States is hereby providing notice that it intends to investigate, interview  
10 witnesses, and collect any additional evidence throughout the trial process and/or  
11 sentencing. The United States will produce promptly any discoverable materials  
12 that it obtains throughout the trial process and/or sentencing.

13 If reports of examination and tests are received by the United States in this  
14 case, pursuant to Federal Criminal Procedure Rule 16(a)(1)(F), the United States  
15 will provide said reports of examinations and tests as soon as they are received  
16 and reviewed by the United States. The United States will also provide to defense  
17 a written summary of any expert witness testimony it will seek to present in its  
18 case-in-chief, pursuant to Rules 702, 703, and 705 of the Federal Rules of  
19 Evidence, describing the expert’s opinion, the basis and reasons for those  
20 opinions, and the witness’s qualifications.

21 If the case involves confidential informant(s), the United States hereby  
22 gives notice, based upon safety concerns of confidential informant(s), that it will  
23 not be producing information that would tend to reveal the identity of such an  
24 individual (including audio or video recordings), their location or contact  
25 information, within the time frame provided by the Courts Discovery Order.  
26 However, the United States will be providing in discovery the criminal history and  
27 any benefits received by the confidential informant(s). The United States notes  
28



1 that the trial court must balance the need of the defense for information against the  
2 value of ensuring the safety of the informant(s). *United States v. Rowland*, 464  
3 F.3d 899, 909 (9<sup>th</sup> Cir. 2006). The defendant bears the burden of showing a need  
4 for disclosure. *United States v. Decound*, 456 F.3d 996, 1009 (9<sup>th</sup> Cir. 2006). If  
5 the case is not resolved by a plea agreement, the United States will provide the  
6 identity of informant(s) and information about them, as well as any audio and/or  
7 video recordings involving them, pursuant to *Brady/Giglio* and the Federal Rules  
8 of Evidence

9       If this case involves minor victims and/or witnesses that need to be  
10 protected from retaliation or intimidation, the United States shall either redact  
11 discovery or promptly request a protective order for disclosure of discovery  
12 related to such individuals, pursuant to 18 U.S.C. § 3509.

13       If this case includes contraband child pornography, the United States will  
14 promptly seek a joint “Stipulation re: Computer Forensic Review Procedures for  
15 Child Pornography Contraband” to allow for defense review of child pornography  
16 images at a government facility, pursuant to 18 U.S.C. § 3509(m).

17       In alien cases, the United States will be providing defense counsel with  
18 access to the Alien Administrative File, aka the “A” file.

19       Federal Criminal Procedure Rule 16 does not require the disclosure of grand  
20 jury transcripts. The United States intends to provide transcripts of testifying  
21 witnesses approximately two weeks in advance on any trial in this matter.

### 22 **III. United States Request for Disclosure of Evidence by the Defendant**

23       The United States hereby requests Defendant to promptly disclose the  
24 information and evidence required by Rule 16(b) of the Federal Rules of Criminal  
25 Procedure.

26       The Defendant is charged with an offense(s), the times, dates and places of  
27 which are detailed in the Indictment and discovery materials provided by the



1 United States. Pursuant to Fed. R. Crim.P.12.1, the United States hereby demands  
2 notice of alibi.

3 Lastly, pursuant to Fed. R. Crim.P.12.2(a) and (b), the United States hereby  
4 demands notice of any insanity defense or other mental disease, defect, or other  
5 condition bearing on whether the Defendant has the mental state required for the  
6 offense(s) charged.

7 DATED May 29, 2013.

8 Michael C. Ormsby  
9 United States Attorney

10 *s/Stephanie Van Marter*

11 Stephanie Van Marter  
12 Assistant United States Attorney

13  
14 I hereby certify that on May 29, 2013, I electronically filed the foregoing  
15 with the Clerk of the Court using the CM/ECF System which will send  
16 notification of such filing to the following, and/or I hereby certify that I have  
17 mailed by United States Postal Service the document to the following non-  
18 CM/ECF participant(s):

19  
20 Alison Guernsey  
21 Federal Defenders of Eastern Washington and Idaho  
22 306 East Chestnut Avenue  
Yakima, WA 98901

23 *s/Stephanie Van Marter*

24 Stephanie Van Marter  
25 Assistant United States Attorney